

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JOSEPH B. FLYNN, ET AL.

VS.

AMERICAN HONDA MOTOR CO., INC.,  
ET AL.

§  
§  
§  
§  
§  
§

CIVIL ACTION: 4:11-CV-03908

**AMERICAN HONDA MOTOR CO., INC.'S**  
**ADVISORY TO THE COURT**

TO THE HONORABLE KEITH P. ELLISON:

COMES NOW Defendant American Honda Motor Co., Inc. ("AHM") and submits this Advisory to the Court to call its attention to evidence in the record that relates to the December 10, 2014 hearing on Plaintiffs' Motion for Continuance and AHM's Motion for Summary Judgment.

During yesterday's hearing, Plaintiffs' counsel repeatedly stated that AHM had the opportunity to depose Mr. Mahon and ask him about the opinions that he would later reveal in his affidavit. AHM respectfully notes that at the end of Mr. Mahon's deposition, AHM's counsel asked Mr. Mahon if AHM had "now obtained all of the opinions that you intend to give at the time of trial in this case?" See Defendants' Reply in Support of their Joint Motion to Strike Plaintiffs' Airbag Expert's Affidavit, (Doc. 138), Ex. 4 (Mahon Depo. at 241). Mr. Mahon did not respond by stating he had any opinions regarding: (1) the economic feasibility of his alternative design concept; (2) that it would have prevented or significantly reduced the risk of harm without impairing product utility; (3) that his alternative design concept would not impose an equal or greater risk of harm; or (4) any other topic. Mr. Mahon stated: "I think in terms of opinions that's correct." *Id.* He further stated that they had covered the bases for his opinions at

his deposition. *Id.*

All the new opinions in Mahon's affidavit, that the Court correctly excluded, were neither in Mr. Mahon's required report nor disclosed at his deposition despite being asked if he had any other opinions he would offer at trial. Plaintiffs have no evidence of multiple elements of a safer alternative design. Permitting discovery on under-reported incidents to NHTSA will not provide any evidence to establish that Mahon's design concept satisfies the legal requirements for a safer alternative design.

AHM respectfully requests the Court deny Plaintiffs' Motion for Continuance in its entirety and grant AHM's Motion for Summary Judgment.

Respectfully submitted,

/s/ Jeffrey S. Hawkins  
Jeffrey S. Hawkins  
State Bar No. 09249100  
E-mail: jhawkins@phmy.com

David M. Prichard  
State Bar No. 16317900  
S.D. Tex. I.D. No. 0616  
E-mail: dprichard@phmy.com

David R. Montpas  
State Bar No. 00794324  
S.D. Tex. I.D. No. 25667  
E-mail: dmontpas@phmy.com

PRICHARD, HAWKINS, McFARLAND  
& YOUNG, L.L.P.  
Union Square, Suite 600  
10101 Reunion Place Boulevard  
San Antonio, Texas 78216  
(210) 477-7400 – Telephone  
(210) 477-7450 – Facsimile

Derek S. Whitefield  
Texas Bar No. 24048259

DYKEMA GOSSETT, LLP  
333 South Grand Ave., Ste 2100  
Los Angeles, CA 90071  
(213) 457-1777 – Telephone  
(213) 457-1850 – Facsimile

**ATTORNEYS FOR DEFENDANT,  
AMERICAN HONDA MOTOR CO.,  
INC.**

**CERTIFICATE OF SERVICE**

I certify that on the 11th day of December 2014, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Southern District of Texas, using the electronic case file system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by the Federal Rule of Civil Procedure 5(b)(2).

/s/ Jeffrey S. Hawkins  
Jeffrey S. Hawkins